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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 1034

MILTON M. KRAMER,
WALLACE FLOYD NELSON,
JOHN ELLIOTT MAGRAW,
LOREN ELMER TESDELL,
JOSEPH GUINN,
JAMES WERNER BRISTAH,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Sixth Circuit
and
BRIEF IN SUPPORT THEREOF.

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UNITED STATES OF AMERICA,
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PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Sixth Circuit.

Your petitioners, Milton M. Kramer *et al.*, hereby pray that a writ of certiorari be granted directing the U. S. Circuit Court of Appeals for the Sixth Circuit to certify to this Court for review and determination the cause of *Milton M. Kramer et al., appellants, vs. United States of America, appellee,* Cause No. 9812 in the U. S. Circuit Court of Appeals for the Sixth Circuit.

Section 5(g) of the Selective Training and Service Act of 1940, 50 U. S. C., § 305(g) is as follows:

> "Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in

> war in any form. Any such person * * * shall * * *, if he is found to be conscientiously opposed to participation, in such noncombatant service, in lieu of such induction, be assigned to work of national importance under civilian direction."

Regulation 653.12, 8 Federal Register, page 4291, is as follows:

> "Assignees shall report to the camp to which they are assigned; remain therein until released or transferred elsewhere by proper authority, except when performing assigned duties or on authorized missions or leave outside of camp; perform their assigned duties promptly and efficiently; keep their persons, clothing, equipment, and quarters neat and clean; conserve and protect government property; conduct themselves both in and outside of the camp so as to bring no discredit to the individual or the organization; and comply with such camp rules as may be prescribed or such directions as may be issued from time to time by the Director of Selective Service."

Indictments for violation of the above Act of Congress and said regulation were brought against all six petitioners. The indictments in all six cases were the same. The specific act alleged to constitute the violation was "leaving civilian public service camp without permission." (Record 2, 15, 22, 28, 35 and 42.) The six cases were tried jointly, were appealed jointly, and were tried as a single case on appeal. The review asked in this Court is a joint review requested by all six petitioners. The evidence is the same in all the cases. (Record 50.) All of the petitioners had been classified as conscientious objectors by their draft boards and had been assigned to civilian public service camp at Coshocton, Ohio, later transferred to a side camp at Sherrodsville, Ohio, to perform work of national importance where they worked at tree planting and soil conservation for about fifteen months. Petitioners were all college trained men, having taken post-graduate work, and all were experienced

social workers. They asked for leave over a weekend to attend a meeting of social workers in Chicago. This was refused and petitioners left camp claiming that they were illegally confined in camp, compelled to work without pay, and, if assigned to work for private employers, their wages were taken by the government, that they were obliged to pay for their own food and clothing, that they were compelled to pay $35.00 a month to the government, were deprived of workman's compensation and allowed nothing in case of injury, and that no provision was made for their families or dependents, and that in the event of injury or death while in camp, they or their dependents received nothing.

Petitioners claim that they were justified in "going out of camp" for the following enumerated reasons, which also show the jurisdiction of the court by reason of the several parts of the Constitution of the United States violated. These enumerated reasons also show the questions involved, their importance, and the reasons for granting the writ:

1. Federal Regulation 653.12 (quoted above) conflicts with the Act of Congress (5(g) quoted above) and is null and void so far as this case is concerned.

2. Federal Regulation 653.12 was issued under an unconstitutional delegation of legislative authority so far as this case is concerned and is null and void.

3. Petitioners received no pay for their work although under the Act of Congress they could be paid and were deprived of the benefits of workman's compensation and allowances for themselves and their dependents.

4. Petitioners were required to pay the government $35.00 a month for their board and clothing and received no pay.

5. If assigned to work for private employers, petitioners' wages were taken by the government.

6. The act of "going out of camp without authority" charged in the indictments was trivial under the circumstances.

7. Regulation 653.12 and the treatment of petitioners in C. P. S. Camp violated the constitutional guarantees against involuntary servitude, cruel and unjust punishment, unlawful delegation of legislative authority, freedom of conscience and worship and taking property without due process of law.

8. The lower courts asserted that if Section 653.12 was not authorized by Section 5(g) of the Selective Training and Service Act, then it was issued under the war powers of the President. We will show that petitioners were not tried under any war power.

9. The C. P. S. Camp in which petitioners were confined was in essence under military control and contrary to the Act of Congress 5(g) above referred ot.

Petitioners were tried and convicted under a regulation that was null and void.

WHEREFORE, your petitioners pray that a writ of certiorari issue under the seal of this Court to the Circuit Court of Appeals for the Sixth Circuit commanding said court to certify and send to this Court a complete transcript of the record and proceedings of said court in case number 9812, *Milton M. Kramer et al., appellants, vs. United States of America, appellee.*

JOHN A. CHAMBERLAIN,

Attorney for Milton M. Kramer et al., Petitioners.